

Table of Contents

PART I. HOT TOPICS

CHAPTER 1. HOT TOPICS IN SECURITIES LITIGATION

- § 1:1 Introduction
- § 1:2 Private Securities Litigation Reform Act—Major developments and issues
- § 1:3 Primary and secondary liability: *Stoneridge*, *Janus Capital*, and *Lorenzo*
- § 1:4 Recent Developments under the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”)
- § 1:5 *[Reserved]*
- § 1:6 401(k) plan fee litigation
- § 1:7 Recent developments in M&A litigation
- § 1:8 The impact of Rule 23(f) on class certification of securities class actions
- § 1:9 Strategic considerations in internal investigations
- § 1:10 *[Reserved]*
- § 1:11 Litigation against bank directors and officers by the Federal Deposit Insurance Corporation as receiver of closed banks
- § 1:12 Stockholder Appraisal Actions in the Delaware Court of Chancery

PART II. OVERVIEW

CHAPTER 2. INTRODUCTION

- § 2:1 Scope of work
- § 2:2 Preparing complaint
- § 2:3 Responding to complaint
- § 2:4 Discovery
- § 2:5 Class certification and summary judgment
- § 2:6 Trial and settlement
- § 2:7 Arbitration

PART III. PREPARING COMPLAINT

CHAPTER 3. CHECKLISTS AND FORMS FOR CAUSES OF ACTION

- § 3:1 Overview

A. GENERAL PLEADING REQUIREMENTS

- § 3:2 Introduction
- § 3:3 Pleading jurisdiction and venue
- § 3:4 Pleading compliance with statute of limitations
- § 3:5 Pleading fraud with particularity
- § 3:6 Pleading class action
- § 3:7 Pleading derivative action

B. FEDERAL CAUSES OF ACTION

- § 3:8 Introduction

§ 3:9 Definition of federal “security”

1. SECURITIES EXCHANGE ACT OF 1934

- § 3:10 Section 10b and Rule 10b-5
- § 3:11 Aiding and abetting liability under Rule 10b-5
- § 3:12 Section 9
- § 3:13 Section 14(a)
- § 3:14 Section 14(e)
- § 3:15 Section 16(b)
- § 3:16 Section 18
- § 3:17 Section 20 (control-person liability)
- § 3:18 Section 20A (insider trading)

2. SECURITIES ACT OF 1933

- § 3:19 Section 11
- § 3:20 Sections 5 and 12(a)(1)
- § 3:21 Section 12(a)(2)
- § 3:22 Section 17(a)
- § 3:23 Section 15 (control-person liability)

3. OTHER FEDERAL CLAIMS

- § 3:24 Respondeat superior liability
- § 3:25 Conspiracy liability
- § 3:26 RICO

C. STATE LAW CAUSES OF ACTION

§ 3:27 Introduction

1. STATUTORY CAUSES OF ACTION

- § 3:28 State Securities Act—Failure to register
- § 3:29 Fraud
- § 3:30 Other statutory claims

2. COMMON-LAW CAUSES OF ACTION

- § 3:31 Common-law fraud
- § 3:32 Breach of fiduciary duty
- § 3:33 Negligence
- § 3:34 Punitive damages

D. SAMPLE COMPLAINTS

- § 3:35 Introduction
- § 3:36 Fraud in sale of securities
- § 3:37 Fraud in open-market trading
- § 3:38 Fraud in proxy statements
- § 3:39 Broker-dealer cases
- § 3:40 Notice of a securities lawsuit
- § 3:41 Plaintiff’s sworn certification

E. SAMPLE MOTIONS FOR INTERIM CLASS LEADERSHIP

- § 3:42 Introduction
- § 3:43 Plaintiff's motion for appointment as interim lead plaintiff
- § 3:44 Plaintiff's brief in support of its motion for appointment as interim lead plaintiff
- § 3:45 Second plaintiff's opposition and competing motion for appointment as interim lead plaintiff
- § 3:46 Third plaintiff's opposition and competing motion for appointment as interim lead plaintiff
- § 3:47 Plaintiff's response to competing motions for selection of interim lead plaintiff

PART IV. RESPONDING TO COMPLAINT

CHAPTER 4. ANSWERS, COUNTERCLAIMS, CROSS-CLAIMS AND THIRD-PARTY CLAIMS

- § 4:1 Overview

A. GENERAL PLEADING REQUIREMENTS

- § 4:2 Introduction
- § 4:3 Answers
- § 4:4 Counterclaims
- § 4:5 Cross-claims
- § 4:6 Third-party claims

B. AFFIRMATIVE DEFENSES

- § 4:7 Introduction
- § 4:8 Statutory defenses—Securities Act Section 11
- § 4:9 —Securities Act Sections 5 and 12(a)(1)
- § 4:10 —Securities Act Section 12(a)(2)
- § 4:11 —Securities Act Section 15 (control person)
- § 4:12 —Securities Exchange Act Section 18(a)
- § 4:13 —Securities Exchange Act Section 20 (control person)
- § 4:14 State law claims
- § 4:15 Nonstatutory defenses

C. SAMPLE PLEADINGS

- § 4:16 Introduction
- § 4:17 Answer
- § 4:18 —Alternate example
- § 4:19 —Alternate example
- § 4:20 Answer and cross-claims
- § 4:21 —Alternate example
- § 4:22 Third-party complaint
- § 4:23 Combined answer, counterclaims, cross-claims and third-party complaint
- § 4:24 Reply to cross-claims
- § 4:25 —Alternate example
- § 4:26 Answer to third-party complaint

§ 4:27 —Alternate example

CHAPTER 5. MOTIONS IN LIEU OF ANSWER

§ 5:1 Overview

A. GENERAL PLEADING REQUIREMENTS

§ 5:2 Introduction

§ 5:3 Motions to dismiss

§ 5:4 Motions to transfer

B. SAMPLE MOTIONS

§ 5:5 Introduction

1. MOTION TO DISMISS

§ 5:6 Motion to dismiss

§ 5:7 Brief in support of motion to dismiss

§ 5:8 Brief in opposition

§ 5:9 Reply brief

2. MOTION TO TRANSFER FOR VENUE

§ 5:10 Notice of motion to transfer venue

§ 5:11 —Brief in support of motion to transfer venue

§ 5:12 —Brief in opposition

§ 5:13 Motion to strike certain exhibits to defendants' motion to dismiss

§ 5:14 Defendants' opposition to plaintiffs' motion to strike

PART V. DISCOVERY

CHAPTER 6. TAKING DISCOVERY

§ 6:1 Overview

A. GENERAL PLEADING REQUIREMENTS

§ 6:2 Introduction

§ 6:3 Discovery meetings among counsel

§ 6:4 Mandatory disclosures

§ 6:5 Preliminary orders

§ 6:6 Interrogatories

§ 6:7 Requests for documents and statements

§ 6:8 Requests for admissions

§ 6:9 Depositions and subpoenas

§ 6:10 Other discovery devices

§ 6:11 Stipulations and scheduling orders

B. DISCOVERY MOTIONS FORMS

§ 6:12 Introduction

1. GENERALLY

§ 6:13 Notice of taking depositions

TABLE OF CONTENTS

- § 6:14 Stipulated protective order
- § 6:15 —Alternate example
- § 6:16 Scheduling order

2. DEFINITIONS AND INSTRUCTIONS FOR WRITTEN DISCOVERY

- § 6:17 Interrogatories
- § 6:18 —Alternate example
- § 6:19 Document requests
- § 6:20 —Alternate example

3. DISCOVERY DIRECTED TO PLAINTIFFS

- § 6:21 Interrogatories
- § 6:22 —Expert witnesses
- § 6:23 —Class action issues
- § 6:24 —Contention interrogatories
- § 6:25 Document requests
- § 6:26 —Class action issues

4. DISCOVERY DIRECTED TO SECURITIES ISSUERS AND CORPORATE DIRECTORS

- § 6:27 Interrogatories
- § 6:28 —Alternate example
- § 6:29 —Alternate example
- § 6:30 Document requests
- § 6:31 —Alternate example
- § 6:32 —Alternate example

5. DISCOVERY DIRECTED TO ACCOUNTANTS

- § 6:33 Interrogatories
- § 6:34 —Alternate example
- § 6:35 —Expert witnesses
- § 6:36 Document requests
- § 6:37 —Alternate example
- § 6:38 —Alternate example

6. DISCOVERY DIRECTED TO ATTORNEYS

- § 6:39 Interrogatories
- § 6:40 —Alternate example
- § 6:41 Document requests
- § 6:42 —Alternate example
- § 6:43 —Alternate example

7. DISCOVERY DIRECTED TO BROKER-DEALER

- § 6:44 Interrogatories
- § 6:45 —Alternate example
- § 6:46 Document requests
- § 6:47 —Alternate example

§ 6:48 —Alternate example

CHAPTER 7. SECURITIES LITIGATION DISCOVERY DISPUTES

§ 7:1 Overview

A. GENERAL PLEADING REQUIREMENTS

§ 7:2 Introduction

§ 7:3 Motions to compel discovery

§ 7:4 Motions to limit discovery

B. DISCOVERY MOTION FORMS

§ 7:5 Introduction

1. MOTION TO COMPEL DISCOVERY

§ 7:6 Notice of motion and motion, memorandum in support, affidavit and proposed order

§ 7:7 —Brief in opposition and affidavit

§ 7:8 — —Alternate motion papers in support

§ 7:9 — —Papers in opposition

2. MOTION TO STAY DISCOVERY

§ 7:10 Supporting brief

§ 7:11 —Brief in opposition

PART VI. CLASS CERTIFICATION AND SUMMARY JUDGMENT

CHAPTER 8. CLASS CERTIFICATION

§ 8:1 Overview

A. GENERAL PLEADING REQUIREMENTS

§ 8:2 Introduction

§ 8:3 Motion to certify and defendant's rebuttal opportunity

§ 8:4 Interlocutory review of class certification orders

B. FORMS RELATING TO MOTIONS FOR CLASS CERTIFICATION

§ 8:5 Introduction

§ 8:6 Plaintiffs' memorandum in support of motion

§ 8:7 —Defendants' memorandum in response to motion

§ 8:8 — —Plaintiffs' reply memorandum in support of motion

§ 8:9 Petition for interlocutory appeal

§ 8:10 Opposition to petition for interlocutory appeal

§ 8:11 Opt-Out Notice in a Rule 10b-5 Case

§ 8:12 Outline for Plaintiffs' Expert Report at Class Certification on Market Efficiency

CHAPTER 9. SUMMARY JUDGMENT

§ 9:1 Overview

TABLE OF CONTENTS

A. GENERAL PLEADING REQUIREMENTS

- § 9:2 Introduction
- § 9:3 Motion for summary judgment

B. FORMS RELATING TO MOTIONS FOR SUMMARY JUDGMENT

- § 9:4 Introduction
- § 9:5 Defendant's brief in support of motion
- § 9:6 —Plaintiff's brief in opposition to motion
- § 9:7 — —Defendant's reply brief

PART VII. TRIAL AND SETTLEMENT

CHAPTER 10. TRIAL

- § 10:1 Overview

A. GENERAL PLEADING REQUIREMENTS

- § 10:2 Introduction
- § 10:3 Trial forms in general

B. TRIAL FORMS

- § 10:4 Introduction

1. PLAINTIFFS' FORMS

- § 10:5 Statement of case
- § 10:6 Trial brief
- § 10:7 Proposed voir dire questions
- § 10:8 Witness list
- § 10:9 Exhibit list
- § 10:10 Requested jury instructions and verdict form

2. DEFENDANTS' FORMS

- § 10:11 Statement of case and trial brief
- § 10:12 Notice of motion and motion in limine with supporting memorandum
- § 10:13 —Proposed order
- § 10:14 Proposed voir dire questions
- § 10:15 Witness list
- § 10:16 Exhibit list
- § 10:17 Proposed jury instructions and verdict form

CHAPTER 11. SETTLEMENT

- § 11:1 Overview

A. GENERAL PLEADING REQUIREMENTS

- § 11:2 Introduction
- § 11:3 Settlement considerations

B. SETTLEMENT FORMS

- § 11:4 Introduction

- § 11:5 Settlement agreement and release
- § 11:6 —Alternate example
- § 11:7 —Alternate example
- § 11:8 — —Exhibit A: Confession of judgment
- § 11:9 — —Exhibit B: Stipulation for dismissal with prejudice
- § 11:10 Class action cases—Stipulation of Settlement
- § 11:11 —Exhibit A: (Proposed) Preliminary Approval Order
- § 11:12 —Exhibit A-1: Notice of pendency and proposed settlement of class action
- § 11:13 —Exhibit A-2: Proof of claim and release
- § 11:14 —Exhibit A-3: Summary notice of pendency and proposed settlement of class action
- § 11:15 —Exhibit B: (Proposed) Judgment
- § 11:16 —Supplemental Agreement
- § 11:17 *[Deleted]*

PART VIII. ARBITRATION

CHAPTER 12. LEGAL CONSIDERATIONS AND PRACTICE DOCUMENTS

- § 12:1 Overview

A. LEGAL AND PRACTICE CONSIDERATIONS

- § 12:2 Introduction
- § 12:3 Legal basis for compelling arbitration
- § 12:4 Commencing arbitration
- § 12:5 Discovery
- § 12:6 Conduct of hearing
- § 12:7 Punitive damages issues
- § 12:8 Appeal: modification or vacation of award

B. ARBITRATION FORMS

- § 12:9 Introduction
- § 12:10 Motion to compel arbitration
- § 12:11 —Memorandum in opposition
- § 12:12 — —Reply memorandum
- § 12:13 Statement of claim
- § 12:14 —Joint answer of respondents
- § 12:15 Claimant's prehearing memorandum
- § 12:16 Respondents' prehearing memorandum
- § 12:17 Claimant's posthearing memorandum
- § 12:18 Respondents' posthearing memorandum

APPENDICES

- APPENDIX 1. Securities Litigation Selected 28 U.S.C. Sections Selected Sections of Title 28, United States Code
- APPENDIX 2. Selected Sections of Securities Act of 1933, 15 U.S.C. §§ 77a et seq.
- APPENDIX 3. Selected Sections of Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq.

TABLE OF CONTENTS

APPENDIX 4.	Racketeer Influenced and Corrupt Organizations, 18 U.S.C. §§ 1961 et seq.
APPENDIX 5.	Private Securities Litigation Reform Act of 1995
APPENDIX 6.	Securities Litigation Uniform Standards Act of 1998
APPENDIX 7.	Selected SEC Rules
APPENDIX 8.	Uniform Securities Act (Last Revised or Amended in 2005)
APPENDIX 9.	Federal Arbitration Act, 9 U.S.C. §§ 1–15
APPENDIX 10.	FINRA Code of Arbitration Procedure for Customer Disputes
APPENDIX 11.	FINRA Code of Arbitration Procedure for Industry Disputes
APPENDIX 12.	American Arbitration Association Securities Arbitration Rules

Table of Laws and Rules

Table of Cases

Index